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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

K0448.70012US00

Application Number

09/980,954-Conf.
#3440

Filed

June 5, 2000

First Named Inventor

Akira Kaji et al.

Art Unit

1656

Examiner

D. J. Steadman

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant /inventor.
☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.

Registration number 40,212

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34. _____


Signature

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December 4, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of 1 forms are submitted.

Certificate of Mailing Under 37 CFR 1.8(a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: December 4, 2007

Signature:  (Sylvana Householder)

ARGUMENT FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

1. Protein Atomic Coordinates Are Not Merely Descriptive Matter

The Examiner's allegation, that the atomic coordinates are merely descriptive matter that is not functional, is incorrect. The atomic coordinates of RRF protein cannot be "merely descriptive" because these coordinates represent an actual three dimensional structure to the skilled person.

See Amendment filed on November 21, 2005 at pages 13-14; Amendment filed on June 6, 2006 at pages 7-8; and Amendment filed on March 21, 2007 at pages 7-8.

2. *In Re Gulack* Case Is Inapplicable To The Claims

The Examiner's use of In re Gulack in maintaining the claims are obvious in view of the prior art is incorrect.

See Amendment filed on November 21, 2005 at pages 11-13; Amendment filed on June 6, 2006 at pages 7-8; and Amendment filed on March 21, 2007 at pages 8-9.

3. Scope Of Enablement Rejection Does Not Take Into Consideration Claim Language

The Examiner has interpreted the claims as encompassing the use of "homology models". The claims require that the three dimensional structure of the conserved active site contain Arginines at positions 110, 129 and 132, and that the RRF from which the conserved active site structural information is drawn be functional, i.e., that the RRF binds ribosomal RNA and recycles ribosomes.

See Amendment filed on November 21, 2005 at pages 7-10; Amendment filed on June 6, 2006 at page 6; and Amendment filed on March 21, 2007 at pages 5 and 7.

4. Broadest Reasonable Interpretation Of The Claims Does Not Include Homology Models

The Examiner's statement that the claims include "homology models" under a broad, but reasonable, interpretation of the claims is incorrect. The Examiner's citation to the specification in support of the claim interpretation is inappropriate in view of the claim language.

See Amendment filed on March 21, 2007 at pages 5-6.